

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34469

STATE OF IDAHO,)	2008 Unpublished Opinion No. 678
)	
Plaintiff-Respondent,)	Filed: October 21, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
LOYD EDWARD PERRY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. William H. Woodland, District Judge.

Order revoking probation and requiring execution of previously suspended sentence for sexual abuse of a child under the age of sixteen years, affirmed.

E. W. “Skip” Carter, Pocatello, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent. Kenneth K. Jorgensen argued.

PERRY, Judge

Loyd Edward Perry appeals from the district court’s order revoking probation and reinstating his previously suspended sentence for sexual abuse of a child under the age of sixteen years. For the reasons set forth below, we affirm.

Perry observed practice sessions of a summer cheerleading camp for teenage girls at a local university. At night, Perry returned to the campus and entered the dormitory where the camp attendees were housed. Perry entered an unlocked door and inappropriately touched a twelve-year-old girl while she slept. Perry was arrested and charged with sexual abuse of a child under the age of sixteen years, I.C. § 18-1506, and burglary, I.C. §18-1401. Perry pled guilty to sexual abuse of a child under the age of sixteen years, and the state dismissed the burglary charge. On November 5, 2002, Perry was sentenced to a unified term of fifteen years, with a minimum period of confinement of four years. However, the district court retained jurisdiction

for 180 days. On May 20, 2003, the district court suspended Perry's sentence and placed him on probation for fifteen years.

Two years later, Perry admitted to violating the terms of his probation. The district court continued Perry's probation, but imposed additional conditions. Thereafter, another report of probation violation was filed, and the district court determined that Perry had violated his probation. The district court revoked Perry's probation and ordered execution of the original sentence. Perry appeals arguing that the district court abused its discretion in finding that he violated his probation and in revoking his probation.

As an initial matter, the state contends that the order suspending Perry's sentence and placing him on probation was not entered until after the period of retained jurisdiction had expired and that, therefore, the district court did not have jurisdiction to enter such an order. In pertinent part, I.C. § 19-2601(4) provides that following a conviction a district court may:

Suspend the execution of the judgment at any time during the first one hundred eighty (180) days of a sentence to the custody of the state board of correction. The court shall retain jurisdiction over the prisoner for the first one hundred eighty (180) days The prisoner will remain committed to the board of correction if not affirmatively placed on probation by the court.

In *State v. Taylor*, 142 Idaho 30, 121 P.3d 961 (2005), the Idaho Supreme Court addressed the effect of a district court's order issued after the 180-day period of retained jurisdiction.¹ In that case the Court held:

The statute only permits a court to retain jurisdiction over a prisoner for 180 days. Upon the expiration of that time period, the court loses jurisdiction to place the prisoner on probation.

. . . Because the 180-day period of retained jurisdiction expired without the district court affirmatively placing the Defendant on probation, the Defendant remained committed to the custody of the Idaho Board of Correction. The district court's judgment placing the Defendant on probation was therefore void because the court no longer had jurisdiction.

Id. at 31-32, 121 P.3d at 962-63.

¹ A 2005 amendment to I.C. § 19-2601(4) allows for a district court to extend the period of retained jurisdiction for up to thirty days in extraordinary circumstances. However, we need not address the potential impact of this amendment as it was not in effect at the time the district court issued its probation order. See *Taylor*, 142 Idaho at 31, 121 P.3d at 962.

In this case, the district court entered the order retaining jurisdiction for 180 days on November 5, 2002. The district court retained jurisdiction over Perry until the expiration of the 180th day after issuance of this order. However, the district court did not enter the order placing Perry on probation until May 20, 2003--195 days after retaining jurisdiction. Therefore, we are constrained by the Supreme Court's holding in *Taylor* to conclude that the order of May 20, 2003, suspending Perry's sentence and placing him on probation was void because the district court no longer had jurisdiction. Accordingly, we will not address further any of Perry's issues on appeal. The district court's order revoking probation and requiring execution of Perry's previously suspended sentence is affirmed.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**